


**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building		(2) MEETING DATE November 18, 2008		(3) CONTACT/PHONE Karen Nall, Senior Planner (805) 781-5606	
(4) SUBJECT Transmittal of Transfer Of Development Credit Blue Ribbon Committee Final Report					
(5) SUMMARY OF REQUEST On July 25, 2006, the Board of Supervisors directed that a Transfer of Development Credit Blue Ribbon Committee (TDC BRC) be created to review the existing County Transfer of Development (TDC) program. The TDC BRC was asked by your Board to provide recommendations on whether to keep a TDC program in place, and if so what that program should contain. The attached final report from the TDC Blue Ribbon Committee makes recommendations for modifications to the program and discusses a number of overarching issues which led to the those recommendations.					
(6) RECOMMENDED ACTION That your Board: 1. Receive and file the final report from the Transfer of Development Credit Blue Ribbon Committee. 2. Provide direction to staff based on the recommendations contained in the report.					
(7) FUNDING SOURCE(S) General Fund		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
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(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Public Works and Air Pollution Control District					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input checked="" type="checkbox"/> All			(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board N/A
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. <u>90 min</u>) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input checked="" type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
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(23) ADMINISTRATIVE OFFICE REVIEW 					



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

TO: BOARD OF SUPERVISORS

FROM : KAREN NALL, SENIOR PLANNER

VIA: KAMI GRIFFIN, ASSISTANT DIRECTOR *KG by KGH*

DATE: NOVEMBER 18, 2008

SUBJECT: TRANSMITTAL OF TRANSFER OF DEVELOPMENT CREDIT BLUE RIBBON COMMITTEE FINAL REPORT

RECOMMENDATION

That your Board:

1. Receive and file the final report from the Transfer of Development Credit Blue Ribbon Committee.
2. Provide direction to staff based on the recommendations contained in the report.

DISCUSSION

On July 25, 2006, the Board of Supervisors directed that a Transfer of Development Credit Blue Ribbon Committee (TDC BRC) be created to review the existing County Transfer of Development Credit (TDC) program. This direction was generated by issues raised about the program from the Planning Commission and the public. The TDC BRC was asked by your Board to provide recommendations on whether to keep a TDC program in place, and if so what that program should contain.

The TDC BRC is made up of 15 individuals representing a diverse group of interests which include agriculture, the environment, development, Boards and Commissions, Advisory Groups, incorporated cities, the Land Conservancy of SLO County and the general public. The committee met 33 times over a two year period.

The attached final report from the TDC Blue Ribbon Committee makes recommendations for modifications to the program and discusses a number of overarching issues which led to the those recommendations. It also includes a brief discussion of what a transfer of development credit program is and the intended goals, the history of the existing county program and revisions and amendments made to date, statistics of the use of the program since its inception and a detailed discussion of the TDC BRC makeup, education process and work program.

OTHER AGENCY INVOLVEMENT/IMPACT

The Public Works Department, Air Pollution Control Board, the City of San Luis Obispo and the City of Paso Robles all were represented on the committee.

FINANCIAL CONSIDERATIONS

Administration of the TDC Program is covered by application fees. Any amendments to the program would require work program and cost estimate be developed and brought back to the Board for approval and appropriation of funding.

RESULTS

Review of the report will provide staff direction for possible amendments to the program.

TRANSFER OF DEVELOPMENT CREDITS BLUE RIBBON COMMITTEE FINAL REPORT



NOVEMBER 18, 2008

SAN LUIS OBISPO DEPARTMENT OF PLANNING AND BUILDING

**TRANSFER OF DEVELOPMENT CREDITS
BLUE RIBBON COMMITTEE
2006-2008**

Joy Fitzhugh, SLO County Farm Bureau
Charles Whitney, Rancher, Santa Margarita
Maria Lorca, ECOSLO
Susan Harvey, Sierra Club
Chad Whittstrom, Developer
Dennis Sullivan, Developer
Bruce Richard, VP, Land Conservancy of SLO County
Mark Pearce, Farm Credit West
Richard Marshall, Public Works (resigned)
Aeron Arlin Genet, Air Pollution Control Board
Mellissa Boggs-Blalack, Citizen
Christine Volbrecht, Citizen
Jesse Hill, South County Community Advisory Group
Nicholas Marquart, Templeton Area Advisory Group
Ron Whisenand, City of Paso Robles
Kim Murry, City of San Luis Obispo

Department of Planning and Building
Kami Griffin, Assistant Director
Karen Nall, Senior Planner

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EXECUTIVE SUMMARY

On July 25, 2006, the Board of Supervisors directed that a Transfer of Development Credit Blue Ribbon Committee (TDC BRC) be created to review the existing County Transfer of Development (TDC) program. This direction was generated by issues raised about the program from the Planning Commission and the public. The TDC BRC was asked by your Board to provide recommendations on whether to keep a TDC program in place, and if so what that program should contain.

The TDC BRC is made up of 15 individuals representing a diverse group of interest which include agriculture, the environment, development, Boards and Commissions, Advisory Groups, incorporated cities, the Land Conservancy of SLO County and the general public. The committee met 33 times over a two year period. The committee learned about TDC programs from experts in the field, discussed issues with the existing program and explored alternatives. Because of the diverse interest represented, the committee had many lively discussions and rarely achieved unanimous support for potential changes to the program.

Following the two years of meetings, the TDC BRC has determined that a TDC Program can be one mechanism to achieve the preservation of the County's valuable agricultural and open space lands by directing growth where services may be more effectively provided. The current TDC Program is not functioning in the manner that was originally intended; therefore the TDC BRC recommends that the Program should be modified to ensure the implementation is further supported by the County and community.

This report will include a brief discussion of what a transfer of development program is and the intended goals. The history of the existing county program is discussed and a discussion of the revisions and amendments made to the program to date. It also includes statistics of the use of the program since its inception. The report provides a detailed discussion of the TDC BRC makeup, education process and work program. It discusses a number of overarching issues which led to the committee's recommendations.

The Board of Supervisors should direct staff to prepare amendments to the TDC Program as well as provide direction as to the potential solutions to the overarching issues as outlined in this report. These solutions are potentially complicated and require that specific work programs be developed and funding provided for their development and implementation. The following are the potential solutions which are discussed in detail beginning on page 11:

- Mapping of Sending and Receiving Sites
- Defining Specific Study Area or Community Based Plans
- Evaluate Antiquated Subdivisions
- Evaluate Credit Value verses Receiving Site Value
- Mandate Use of TDC for Entitlements
- Land Banking Program

Recommendations for changes that can be implemented through minor revisions to the program are found beginning on page 13.

BACKGROUND

WHAT IS A TDC?

"TDC" stands for "transfer development credit," where:

- A "**Credit**" is a capital asset.
- "**Development**" means the asset has value related to the potential for construction of single family residences and other types of uses.
- "**Transfer**" means the credit can be bought, sold or traded.

A TDC program deals with the movement (transfer) of development from one parcel of land to another; from a "**sending**" site to a "**receiving**" site. The reason for moving development from one place to another is primarily to guide development to locations that can better support it.

A TDC program has three main parts:

- Identifying where to move development from (the sending areas),
- Identifying where to move development to (the receiving areas) and
- A method to get the development from one place to the other.

WHAT IS A TDC PROGRAM USED FOR? WHY IS IT NEEDED?

TDC programs can be used to accomplish multiple goals including agricultural protection, conservation of environmentally sensitive areas and retiring development potential in antiquated subdivisions to address infrastructure, service delivery, air quality and regional transportation issues. There are a number of benefits associated with TDC program. There are direct benefits to the physical environment, direct benefits to the county, and direct benefits to landowners.

The benefit to the physical environment will come in several ways: TDC's can result in the permanent protection from development of habitat that may be critical to the survival of individual plant or animal species. The TDC program provides the funding for this protection. The air quality of the County is impacted by development in areas where its remote location requires residents to drive long distances to employment, markets, schools, and other needed services. The TDC program can redirect this development to areas where less driving is required and existing resources exist to meet basic needs.

The benefit to the county comes through the reduction in the development potential of existing lots in outlying rural areas. If these lots continue to be improved with homes, the county will be faced with extending services such as police and fire protection and road improvements into these areas. Reducing development potential in these areas decreases costs of public services and therefore has a direct benefit to the county and the taxpayer. Use of TDCs also benefits the

taxpayer in that the program can be self-funded without the need for support by shrinking general funds to compensate owners who are "retiring" their development potential.

The benefits also extend to the individual landowner retiring development potential. A TDC program can become "another tool in the toolbox" for an agency to use to provide landowners with a financial incentive to retire their land's development potential. A landowner who wishes to stay on and farm the land can face a number of complex and difficult financial hurdles in trying to accomplish this goal. Selling the development potential of even a small portion of a large ranch may provide just enough funding to retire outstanding loans or make it financially feasible to permanently protect habitat area. This can be critical to the ongoing viability or successful estate planning for a number of families.

THE HISTORY BEHIND THE PROGRAM IN SLO COUNTY

The TDC program had its earliest beginnings in San Luis Obispo County in the summer of 1989. The Board of Supervisors appointed a Blue Ribbon Committee to study growth in the county. The report included a comprehensive list of recommendations including need to have a clear understanding of development trends in the rural areas of the county. This recommendation was implemented in late 1989 when the county undertook a series of studies that were called the "***Rural Settlement Pattern Strategy***".

The Rural Settlement Pattern Strategy consisted of three phases. Phase I, an inventory and documentation of development trends, was completed in August 1990. Phase I documented the spread of new lot and home development in the far outlying areas of the county. Phase II was completed in March 1991 and contained a series of recommendations based on the information generated from Phase I. One of the recommendations was the development of a Transfer of Development Credit (TDC) program. The development of the TDC program is Phase III.

The Transfer of Development Credit Technical Advisory Committee (TAC) was established by the Board of Supervisors in November 1993 in order to begin to review the issues associated with the development of a TDC program. The first issue was whether or not a TDC program would be feasible. Would there be interest and support for a program? How could incentives be developed to encourage its use? Could sending and receiving sites be easily identified? The second issue revolved around the spatial pattern of development that would result from a TDC program. Any new proposal for development raises concerns from the community on issues of neighborhood character, traffic and the environment. The acceptance of a TDC program in a community was going to depend on the acceptability of the specific areas that would be protected (the sending sites) and how the areas that would receive additional development would be designed and developed.

The review process of the TAC was guided by two separate reports. The first report was called the "*Pilot Project Report*". This report was released in March 1994 and was a countywide review of those areas that had the potential of supporting a TDC program. The report documented settlement patterns on a regional basis and identified the public benefits that could be achieved through TDCs. The report also suggested criteria for selecting individual regional areas where a detailed TDC program could be developed. The ideas of the criteria contained in

this report were carried forward into the ordinance as the criteria used for determining sending and receiving site eligibility.

The second report called the *Demonstration Project Report ("TDCs, Lessons, Issues and Recommendations for a TDC Program in San Luis Obispo County; based on a review of Demonstration Projects")* was completed in September 1995 based on Board direction. The TAC review of this second report resulted in several changes in the direction of the TDC program. The most critical change was expansion of the program to apply countywide. The presumption contained in the *Pilot Project Report* was that TDC programs would be developed on a regional basis within the county and then expanded to apply to the entire county at a later date. As the TAC continued their review, it became clear that a number of good TDC sending and receiving sites exist. These sites had not been looked at in the *Pilot Project Report*. It was felt that a TDC program could work countywide without the need to limit the program to regional areas.

The TDC program was adopted October 8, 1996 as a Countywide program that incorporated criteria for determining sending and receiving site eligibility, procedures for establishing sending and receiving sites and how credit transfers would occur.

AMENDMENTS TO THE PROGRAM

Since the program was adopted in 1996, it has been amended four times. The first amendments completed in 1999 addressed the following:

- Changed the original five geographical areas to seven geographical areas for where credits can be transferred to and from, creating a closer relationship between sending and receiving sites.
- Lowered the potential density bonus from 75 percent to 50 percent and deleted the additional bonus at the receiver site if the sending site was a significant natural resource
- Deleted the "assessment method" for determining numbers of credits and added a method for determining credits based on the existence of underlying legal lots of record. Modified the divisor from 10,000 to 20,000.
- Added the word "voluntary" to references to the countywide TDC program to reinforce the voluntary nature of the program.
- Added language to the section of the general plan encouraging the use of community-based and special focus programs.

The second set of amendments adopted in 2003 addressed the following:

- Deleted the Transfer of Development Credit Review Committee and designated the Planning Commission as the Review Authority to take action on Sending Site applications.

- Deleted the ability for a sending site to qualify for a bonus.
- Modified the length of time for an existing sending site approval is from 5 to 10 years.
- Deleted the unused "preliminary determination" for receiving sites.
- Added the provision that a Receiving Site could not have been an approved Sending Site and that a sending site had to be within 5 miles of an urban or village reserve line (previously village reserve lines were not used for measurement for Receiving Sites).
- Modified the allowable density bonus for Receiving Sites, in order to encourage the location of Receiving Sites closer to existing higher density development.
- Added standards such that a parcel after division could not be less than the lowest minimum parcel size in the applicable land use category where a division would not otherwise be allowed.
- The additional Receiving Site bonus that is allowed was modified so that it could only be requested where the property is within 2.5 miles of an urban or village reserve line.
- Modified the source of transferred section to require that a Receiving Site must look first within 5 miles of the project to find Sending Site credits. Previously this distance was 3 miles.
- Added a South County Community Based Program developed in conjunction with the Nipomo Area Community Advisory Council that required all purchase of credits must be from any valid non-profit corporation organized for conservation purposes approved by the Board of Supervisors.

The third set of amendments were approved in August 2006

- Modified the receiver site criteria to delete all lands within the Agriculture land use category and all lands within 5 miles of a Village Reserve Line from being eligible receiver sites.

In 2007, the program was amended a fourth time to:

- Add the South Atascadero Community Based Program developed in conjunction with a citizen's group from the area. These amendments set special minimum parcel sizes and requirements for the use of TDCs in the South Atascadero area.

USE OF THE PROGRAM TO DATE

Sending Sites

Three Sending Sites have recorded conservation easements and have a total of 252 credits available for sale (see discussion of “mechanics” that follows for how number of credits is established):

- 1997 – 173 credits
- 2001 – 30 credits
- 2002 – 49 credits

209 credits have been approved for transfer

- 119 credits have been approved in urban or village area subdivisions
- 90 credits have been approved in rural area subdivisions

174 credits have been transferred through recorded maps

- 110 credits have been transferred within urban or village areas
- 64 credits have been transferred in the rural areas

35 Credits are still pending final transfer through a recorded map

5,463.95 acres have been preserved in conservation easements in perpetuity.

Receiving Site Approvals

55 total Receiving Site Applications

- 6 South County Projects
- 49 North County Projects
- 37 have been approved.
- 3 were denied
- 6 are still in process
- 9 were withdrawn

There has been on-going use of the program as evidenced by the number of receiving site applications that have been submitted each year.

1996 - 1	2003 - 6
1997 - 0	2004 - 13
1998 - 2	2005 - 15
1999 - 3	2006 - 3
2000 - 1	2007 - 2
2001 - 5	2008 to date - 0
2002 - 1	

MECHANICS OF THE EXISTING PROGRAM

To qualify to be a Sending Site the following steps must be followed:

- Determine if the site meets the sending site criteria set forth in the ordinance.
- Designate the development that will be permanently removed from the property. At a minimum, this includes residential development.
- Complete a “before” and “after” appraisal that determines the value of the property without the restriction on development, and with the restriction on development. The difference between these values is the value of the development (“development value”) that will no longer be permitted on the site in perpetuity and becomes the basis for how many credits are established for a sending site.
- Divide the “development value” by 20,000 which will determine the number of sending credits assigned to that site.
- Receive approval from Planning Commission as a sending site and for the number of credits assigned to the sending site.
- Enter into a Conservation Easement and receive a “Certificate of Sending Credits”. The credits approved are now available for sale and will be assessed by the County Assessor’s office.

To qualify to be a Receiving Site the following steps must be followed:

- Determine if the site meets the receiving site criteria set forth in the ordinance.
- Determine what the potential density bonus would be using the bonus section of the ordinance.
- Complete the tentative land division map approval process, including environmental review in accordance with the California Environmental Quality Act and public hearings. The review of the project includes review of the re-directed density allowed with use of the TDC credits.
- If approved, purchase credits from a sending site located within 5 miles of the receiving site, if none are available, purchase credits from the larger geographical areas as defined in the ordinance.
- Record the map and transfer the credits to County through a “Receipt of Transfer”. This can be done through a traditional escrow or through other means as agreed to by the sending and receiving parties and the TDC Administrator.

TRANSFER OF DEVELOPMENT CREDIT BLUE RIBBON COMMITTEE

The Transfer of Development Credit Blue Ribbon Committee (TDC BRC) was authorized by the Board of Supervisors on July 25th, 2006 to evaluate the County's current TDC program. The committee is made up of 15 individuals representing specific areas of interest which include agriculture, the environment, development, Boards and Commissions, Advisory Groups, incorporated cities, the Land Conservancy of SLO County and the general public. The committee began meeting in September of 2006 and continued to April 2008 for a total of 33 meetings. The meetings have had good participation from committee members as well as from members of the public. The committee agendas, minutes, background reports and work program are available on the Department of Planning and Building's website. http://www.slocounty.ca.gov/planning/meetingcalendar/TDC_Blue_Ribbon_Committee_Agendas_and_Minutes.htm.

The TDC BRC began their review by developing a work program. The work program is attached as Exhibit A. As directed by the Board of Supervisors, the Committee discussed the work program and alternatives to the program and the following provides a summary of the Committee's discussions.

TDC PROGRAM PURPOSE

The committee began consideration of the program with a discussion of four questions. The committee created lists which represent the individual committee member's opinions of the answers to these questions and do not represent a consensus of the committee as a whole. The lists are provided in entirety in Exhibit B. The following are the general concepts which represent the committee's discussions of these questions.

What problems were identified that the TDC program was created to solve?

- Antiquated Subdivisions
- Environmental degradation of sensitive areas
- Loss of open space
- Loss of agricultural lands
- Loss of rural character/ sprawl.

What problems with land use exist today?

- Same as concepts above
- Not In My Backyard (NIMBY) attitudes.
- Cost of development in rural areas verse urban areas
- Political will of decision makers
- Affordable housing
- Resources and infrastructure problem within the urban areas
- Consuming society

What has the TDC Program accomplished?

- Preserved agriculture and open space
- Increased awareness of pressures on agricultural
- Mandated credits for some general plan amendments

What are the problems with the current TDC Program?

- Lack of trust and support for the program
- Lack of clear connection of benefit between sending and receiving sites
- Continued sprawl at receiving site locations
- Exception to established zoning and planning areas standards
- Inequity of sending credits created verses lots created

TDC BLUE RIBBON COMMITTEE EDUCATIONAL PROCESS

After discussions about the issues with land use and the program purpose, the TDCBRC invited a number of speakers to provide the group with information and background on specific topics. A list of the speakers is attached on Exhibit C.

Two speakers (William Fulton and Rick Pruetz) spoke to the TDCBRC about what makes a successful program. For a program to be successful, TDCs need to be used to implement a plan that has a clear purpose and goals and, where appropriate, inter-jurisdictional cooperation. In addition, there needs to be a robust amount of both sending and receiving sites to ensure a sufficient market for trading the TDCs; sufficient economic motivation for both sending and receiving landowners; recognizable benefits to residents at the receiving site areas and a bank or other “market-making” mechanism to process the transaction independently for both senders and receivers.

Mr. Fulton further stated that a TDC program doesn’t work when the real goal is to decrease the overall amount of development, when there are not enough receiving sites, or when there is not enough, or any, economic incentive to participate.

Through Robert Hill’s, Land Conservancy, and Neil Havlik’s, City of San Luis Obispo Natural Resources Manager, presentations the TDCBRC learned that Conservation Easements are the traditional way of preserving land and the only way to guarantee that it will be preserved in perpetuity.

The committee learned about community - based TDC programs through a presentation by members of South Atascadero TDC Committee. The committee members discussed the process they went through to survey residents about parcel size preference and to gather information regarding neighborhood concerns over increased development.

BK Richard, Land Conservancy, provided an overview of the amount of development that has already occurred in many of the antiquated subdivisions in the county. The group learned that some subdivisions are entirely built out or close to being built out. Mr. Richard introduced the concept of embracing these particular subdivisions and possibly allowing additional residential

development or adding commercial zoning to make these area more complete communities, while focusing the TDC program on those undeveloped antiquated subdivisions that may still be positively impacted by the program. Mr. Richard also introduced the concept of a Land Transfer Bank to oversee all credit transfers. In addition, Mr. Richard explained a concept called "The Givings Principle" which requires property owners who receive community "givings" such as up-zones to compensate the community by retiring development potential elsewhere and discussed the cost of sprawl.

Michael Bell explained a TDC program in New Jersey which is state mandated and state funded and emphasized the importance of inter-jurisdictional cooperation and the importance of identifying designated sending and receiving areas.

Through a presentation by Kim Murry the committee learned that the goal of the City of San Luis Obispo's green belt is to provide open space, recreational opportunities and a community separator. The Natural Resources Manager focuses his efforts to secure conservation easements to properties in the greenbelt area

Ron Whisenand explained that the City of Paso Robles's Purple Belt encourages agricultural development in the belt including wineries and tasting rooms as a way to keep agricultural lands economically viable and remain in production rather than succumb to rural residential development pressure.

James Caruso provided an overview of the update of the conservation element and discussed the possibility of a TDC Program being an implementation tool for acquiring open space.

OVERARCHING ISSUES

Throughout the 33 meetings, the TDCBRC kept returning to a number of overarching concepts that include:

- Pattern of Development - More rural development is occurring than unincorporated urban development
- Rural Sprawl - Subdivisions in rural areas
- Loss of Quality of Life - Changes in the rural landscape
- Loss of Ag Land - Conversion of agricultural land to residential uses
- Cost of Development - More expensive to develop within communities
- Cost of Sprawl - More expensive to serve rural areas
- Environmental degradation – Increased environmental impacts due to sprawl
- Importance of Sending and Receiving Site Relationship – Clear benefits of sending site to receiving sites
- Sending Site Credit Value verses Value of Receiving Site created - Relationship of the credits created at the sending site to the value of lots created by receiving sites

RECOMMENDATIONS

Overall Program

These discussions of overarching concepts led to the committee to make recommendations for new “big picture” ideas for the TDC Program. These recommendations are summarized as follows:

1. **Map sending and receiving sites and use criteria to identify locations for sending and receiving sites.**
 - The criteria would determine general areas where receiving sites would **not** be appropriate. These criteria include:
 - Coastal Zone areas
 - Lots in Public ownership
 - Sensitive Resource Area Combining Designation areas
 - Geologic Study Area Combining Designation areas
 - Flood Hazard Combining Designation areas
 - Very high Fire Hazard designation areas
 - Lots with recorded conservation easements
2. **Define boundaries, where appropriate, where sending and receiving areas are related to each other and create special focus programs or community based programs, as currently allowed for in the General Plan.**
 - For example, a special focus program or community based program could be developed for the area east of the City of Paso Robles to include the City’s purple belt and beyond. Development of the program would define and map sending and receiving site areas and evaluate whether an adequate market exists to assure program success. Having smaller mapped areas that are related to one another:
 - Allows a receiving site neighborhood to “see, touch and feel” the benefits of the program.
 - Creates more certainty for program participants and should lead to greater participation
 - Improves community “buy in” of the program because area residents will know where sending and receiving sites may be located and will see the relationship of those sites.
 - Accommodations must be made to address remote areas where a different strategy may be needed to retire development potential.
3. **Evaluate “antiquated subdivisions” to determine if they are still applicable as sending sites or whether changes are appropriate to create complete communities in these areas where adequate services can be provided.**
 - Some antiquated subdivisions have already been developed beyond a point where they can be conserved as open space or agricultural land. A number of these subdivisions are beyond the point where they should be considered

sending sites and are within the Agriculture land use category, yet they are made up of one and two acre lots owned by many different owners. Relative to each antiquated subdivision it should be determined:

- If the antiquated subdivision has developed to the point where it is no longer appropriate to designate it as a sending area
- If the land use category should be changed to reflect the actual development and lot pattern (i.e. Agriculture designation would become Residential Suburban)
- If it is appropriate to designate commercial areas within the subdivision in order to provide local services to the residents of these areas to reduce vehicle miles traveled
- Whether developed antiquated subdivisions should become Receiving Site areas
- Whether CSD's can be formed to address resource needs and maintenance.

4. Evaluate and develop the mechanics of how sending site value verses credits are determined and how receiving sites credits are established..

- The value of development rights for sending sites in an area would need to be assessed through a combination of comparative market analysis and assessor data analysis, and then confirmed through landowner interviews or surveys. The goal of the sending area analysis is to:
 - Identify the number of landowners willing to sell development rights
 - Establish the average market value of a development right in the sending area
 - Determine what a Receiving Site is willing to pay for a development rights.
 - Identify environmental resources to be conserved

5. Evaluate the concept of a "Givings" principle where for certain actions taken by the government which increase the value of the land beyond the general plan limits, proportional compensation is received by the public.

- When additional entitlements are provided to property owners ("givings"), TDCs or a fee paid to a land bank to retire TDCs are required. Examples of entitlements includes :
 - Owner initiated General Plan Amendments ("up-zones" that allow increased density or additional uses or lower minimum lot sizes)
 - Increased entitlements (additional density as allowed by TDC programs)
 - Waivers or modifications of ordinance standards
- A program that **requires** the use of TDCs or a fee paid to a bank to purchase TDCs could be evaluated as a way of capturing the "givings" principle.

6. Establish a TDC Bank that holds credits available for sale to Receiving Sites.

- Banking is currently allowed in the County's TDC program. A valid non-profit can purchase credits from Sending Sites and sell them to Receiving Sites.
- The difficulty in establishing a bank is the initial capitalization of the bank. A bank can be provided capitalization through a number of means including:
 - Gifts from private benefactors
 - Grants from local, state and federal sources
 - Budgeted funding from the County
 - Receiver site/Mitigation fees
- The Bank could also receive partial or full donations of easements, by willing landowners interested in protecting their property and receiving tax benefits.
- The bank should be operated by:
 - Non-profit organization created for the purposes of conservation goals
 - Possibility for more than one bank - perhaps more than one non-profit organization

There is currently a bank operating for the Cambria TDC program. The bank (The Land Conservancy of San Luis Obispo County) purchases property, determines the number of credits available from that property, and then sells the credits to homeowners who have received approval from the county for larger homes. This bank was established using seed funds loaned by the Coastal Conservancy. The purchase of credits has created a revolving fund that allows the purchase of additional lots.

The committee discussed using this type of bank model to "replace" the TDC program. While the initial discussion indicated the bank would collect fees from exactions for entitlements, there maybe legal issues in dealing in fees and not with credits. As the Cambria bank has been successful using a model that transfers credits, following that model could be easier to implement, may have a greater chance for success and has been legally tested. However, a bank can only be successful if initial and on going capitalization can be established.

Financial Impacts

These overarching issues and their potential solutions are potentially complicated and require specific work programs be developed and funding provided for their development and implementation. This includes whether the County can fund the purchase of conservation easements in order to create credits to sell, thus capitalizing a bank.

Potential Amendments to the Existing Program

In addition to the TDCBRC's recommendations for the larger "big picture" changes, the Committee also made recommendations for changes that can be implemented through minor revisions to the program. The following are these identified recommendations:

Overall Program

7. Rewrite the goals and objectives of the program (see attached Exhibit D).

The TDCBRC created revised goals and objectives for the TDC Program. The proposed revisions to the goals and objectives of the program, as specified in the Land Use Element of the General Plan, are to more clearly define the purpose of the program and the benefits the program can offer.

Sending Sites:

8. Do not revise the approved list of allowed uses

No revision is needed the existing list of allowable uses is adequate. Allowed uses for sending sites will be tailored on a case by case basis through the applicable conservation easement process.

9. Revise the ordinance to clarify that allowed uses must be defined as part of the contract approval process.

The proposed amendments would require that before an appraisal is completed on a Sending Site, the applicant must provide the Planning Department with the list of uses that will be allowed on the site after conservation easement. A condition will be placed on the approval that limits subsequent use of the property to only those uses listed in the agreement.

10. Revise the ordinance to note that voluntary mergers may be used to merge existing underlying legal lots of record on the Sending Site.

The proposed amendment would add a section to the ordinance that would note that voluntary mergers are allowed and can be used to combine underlying legal lots of record on a Sending Site. Because landowners may need to retain underlying lots to allow for flexibility in site financing, this ordinance standard would not be a mandate.

11. Revise ordinance to identify the locations on the Sending Site where the retained uses will be situated.

The proposed amendment would require that the conservation easement identify the location of the retained uses. This would clarify that if there are underlying lots, the retained uses may not be established on each underlying lot, but are instead retained for the whole of the sending site.

12. Revise ordinance to rename language for conservation easements. (See Exhibit E)

The proposed amendment would modify the name used in the ordinance for "conservation easement" in order to clarify that the purpose of the easement is to retire development from a Sending Site. This is different from a traditional Conservation Easement which is established to conserve a particular habitat or resource located on a site.

Receiving Sites:

- 13. Revise the ordinance to mandate the use of TDC's for owner initiated general plan amendments and specific plans where there will be an increase in density over what is allowed prior to the action.**

The proposed amendment would mandate the use of TDC's for owner initiated general plan amendments; and specific plans when there will be an increase in residential density as a result of the general plan amendment or specific plan.

- 14. Explore the possibility of using credits for other entitlements.**

The list in Exhibit F notes other entitlements which the TDCBRC suggests be evaluated as other uses for credits in addition to the current use of TDCs for additional residential density at the receiver site. These other entitlements may allow for the use of credits in a variety of areas and for different uses, adding more flexibility to the program and creating a bigger market for the retired credits.. The difficulty in implementing this recommendation will be to determine the exchange value of the credits for the entitlement that is being sought.

SUMMARY

The Transfer of Development Credit Blue Ribbon Committee did determine that a Transfer of Development Credit Program will help to achieve the preservation of the County's valuable agricultural and open space lands and reduce the cost of sprawl through directing growth where services can be efficiently provided.

The Committee recommended both simple amendments to the ordinance, as well as, possible solutions to larger, more complex issues that need additional study.

The Transfer of Development Credit Blue Ribbon Committee recommends that the Board of Supervisors direct staff to prepare amendments to the TDC Program as outlined in this report, as well as provide direction as to the potential solutions to the overarching issues as outlined in this report.

EXHIBIT A
Work Program
December 6, 2006

A: Program Purpose

1. What was the identified problem with land use that the TDC program was created to solve?
2. What are the problems with land use today?
3. What has the TDC program accomplished?
4. What are the specific problems with the current program?

B: Specific Tasks Directed by Board and Planning Commission

1. Evaluate the mechanics of TDC programs specific to holding conservation easements.
2. Reevaluate the allowed uses in conservation easements for sending sites and establish additional specific requirements for management.
3. Investigate a requirement of sending sites to merge all underlying parcels. Consider requiring the TDC program to retire lots.
4. Reevaluate the number that is divided into the development value that is used to determine the number of sending credits assigned to sending sites to reflect current property values.
5. In order to protect against a sprawl pattern of development, review whether density bonuses should be increased within existing communities that have adequate services as an incentive to direct growth into the existing urban and village areas and away from the areas distant from communities, including modifying the density bonuses and locational criteria to increase density bonuses within URLs that have water and sewer service and VRLs that have water service.
6. Strengthen the receiving site criteria. Consider requiring all receiver sites to be located within or contiguous to urban reserve lines (URL's)
7. Explore the cities participation in the program.
8. Evaluate the use of TDC's for general plan amendments.

C: Explore Alternatives (Including through discussions in B above)

D: Produce Final Report

EXHIBIT B

Discussion Questions

The committee began consideration of the program with a discussion of four questions. The following lists represent the individual committee member's opinions of the answers to these questions and do not represent a consensus of the committee as a whole. The lists are not in a ranked order.

What problems were identified that the TDC program was created to solve?

1. Antiquated Subdivisions – the right to build on smaller remote parcels
2. Avoid developing environmental sensitive areas and preserve natural areas (Natural Areas Plan), relocate development to more suitable areas.
3. Lack of infrastructure and maintenance for antiquated subdivisions.
4. Tools, financial incentives to development
5. Provides Farmer and Rancher an option other than subdivision or sale
6. Loss of open space
7. Method of getting open space without taxing, assessing or legislating
8. Option for landowners of antiquated subdivisions
9. Create compact urban forms
10. Deal with growth pressures in the county - "we got discovered"
11. Cost of development in urban areas pushing development into rural areas.
12. Loss of rural character/ sprawl.

What problems with land use exist today?

1. Same as the list created for identified problems with land use that the TDC program was created to solve.
2. Not In My Backyard (NIMBY) attitudes.
3. High cost of land to maintain in agriculture and high cost of development within URL.
4. No political will to adopt a solution to rural sprawl.
5. Low cost of rural development and a lack of affordable housing within URL.
6. Growth pressures
7. Uncertainty of development just outside of the city borders, loss of rural separators, use of city roads and facilities for rural county development
8. Housing needs to be resource based.
9. Amendments to the general plan; have a process that everyone buys into
10. Resource and infrastructure deficits.
11. Rural county, desire to live rural, rules need to be written to direct growth
12. Lack of consistency with the rules.
13. Agricultural cluster divisions and standard subdivisions in the rural areas.
14. TDC program was a minor tool.
15. Lack of resources
16. Consuming culture, need to develop a culture of frugality
17. Large residences and building sites
18. Use of the single map system instead of the traditional dual map system
19. Apply existing lot merger ordinance to inland situations
20. County does not have a public open space program.
21. LUO was not designed to accommodate a TDC type program
22. Need to have political will to hold back a development right of value in order to make a TDC a valuable right

What has the TDC Program accomplished?

1. \$60,000 into Black Lake for restoration project.
2. Preserved agriculture and open space.
3. 5,463.95 acres preserved.
4. Controversy
5. Increased density within URL's
6. Increased awareness of the difficulties of Ag owners to remaining in agriculture.
7. Ability to keep ranchers in agriculture.
8. General Plan Amendments for up-zonings required the use of many credits.
9. Retired lots in antiquated subdivisions.
10. Allowed flexibility of development to allow designs to help avoid environmental issues.
11. Successful program in Cambria has resulted in preservation of habitat & provides an example of a functioning land bank system
12. Limited secondary dwellings for some receiving sites.
13. Used as required mitigation
14. Receiver sites identified in area plans.
15. Provides an incentive to Board of Supervisors to not issue certificates of compliance – TDC program provides alternative methods to secure additional lots.

What are the problems with the current TDC Program?

1. No support for the program by the County.
2. Lack of clear connection of benefit between sending and receiving sites.
3. No agreement of appropriate area for receiving sites including community and Board support
4. Lack of consistency in application of program.
5. Inequity of open space created (sending sites) compared to receiver site lots created.
6. Planning Commission letter issues.
7. Citizen View – prepared by Creston Citizen Guide for Ag Land Preservation.
8. Sending site easements and allowable uses need clarification – retired lots still retain a lot of development potential which may defeat goals of program.
9. Too much of a difference between development eliminated at sending site versus development created at receiving site.
10. Controversy created by allowing division of parcels that cannot otherwise be split.
11. No city participation. No city incentive for retiring remote lots in county.
12. Continued sprawl at receiving site locations.
13. No public benefits associated with receiver sites – neighbors only experience negative impacts.
14. Credits channeled into specific areas = entire county experiences benefits whereas specific neighborhoods experience impacts.
15. No accessibility to sending site locations – public use/benefit of retired sites is limited.
16. Not enough community-based plans which would identify the receiving sites and ensure support for the use of TDCs (discourages use of program).
17. No incentives for compact urban design within URL and VRL.
18. No requirement for use of TDCs within spheres of influence when city's annex.
19. Lack of services for receiver sites that are outside URLs.
20. Lack of trust and support for the program.
21. No EIR completed for original program adoption
22. Circumvents general plan and planning area standards.

EXHIBIT C
List of Speakers

2/14/07 - Robert Hill, Conservation Director, Land Conservancy of San Luis Obispo County - Conservation Easements

3/28/07 - Neil Havlik, Natural Resource Manager, City of San Luis Obispo - City's Open Space Program

06/06/07 - Kathy Sweet, Della Barrett and Tina Salter, Members of the South Atascadero TDC Committee – South Atascadero Community Based Program

8/8/07 - William Fulton, Solimar Research Group, Inc. - Making TDRs Work

8/22/07 - B.K. Richard, Vice-President, Board of Trustees, Land Conservancy of San Luis Obispo County - Antiquated Subdivisions and Land Banking

9/19/07 - Rick Pruetz, FAICP, Consultant and Author on TDR/TDC Programs - Overview of programs through the nation

10/17/07 - Michael Bell, Nature Conservancy - Overview of the New Jersey Pine Barrens TDR program

11/7/07 - Kim Murry, Deputy Planning Director, City of San Luis Obispo - City of San Luis Obispo's Greenbelt

11/7/07 - Ron Whisenand, Planning Director, City of Paso Robles - City of Paso Robles' Purple Belt

12/5/07 - James Caruso, Senior Planner, County of San Luis Obispo - County's update of the Conservation and Open Space Element

1/9/08 - Aeron Arlin-Genet, Supervising A.Q. Specialist - County's Clean Air Plan

1/9/08 - Kami Griffin, Supervising Planner & Karen Nall, Senior Planner, County of San Luis Obispo - Antiquated Subdivisions

2/6/08 - B.K. Richard, Vice-President, Board of Trustees, Land Conservancy of San Luis Obispo County - "Givings" Principle and Land Banks

EXHIBIT D Revised Goals and Objectives

Voluntary Transfer of Development Credits (TDCs)

Countywide Voluntary TDC Program

A voluntary Transfer of Development Credits (TDC) Program is a land use planning tool that allows the right to develop (called credits) to be separated from one site (the sending site) and moved to another (the receiving site). The transfer of the credits reduces the development possible on the sending site and increases the development possible on the receiving site. This program is voluntary, incentive-based, and market-driven between willing sellers and willing buyers.

Consistent with the applicable goals in Chapter 1 of this element, the goal of the voluntary TDC Program ~~will relocate is to retire~~ development potential from natural areas and environmentally sensitive land, land with agricultural capability and the business of agriculture itself, or antiquated subdivisions that are largely undeveloped and under common ownership, or open space and the outlying remote areas of the county. This development potential is then transferred to more suitable areas. The authority to establish a voluntary TDC Program is within the scope of police power established in Article XI, Section 7 of the State Constitution. The establishment of this voluntary program is also an exercise of the county's planning and zoning authority as set forth in the California Planning and Zoning Law, Title 7, Division One of the Government Code.

There are a number of objectives the voluntary TDC Program seeks to accomplish. The primary purpose is to promote appropriate settlement patterns ~~while that~~ maintaining an overall level of development within the capacities of transportation and other public service systems. The objectives of the program are to: ~~As a voluntary countywide program it endeavors to:~~

- protect both land with agricultural capability and the business of agriculture itself;
- reduce development potential within land divisions or other areas that do not have adequate services for residents;
- protect ~~important or extraordinary~~ natural and environmentally sensitive areas that have special environmental and scientific qualities such as biologically unique habitats, sensitive natural communities, riparian habitats, wetlands, habitats or cultural resources;
- reduce development potential in areas that may have the potential for landslides, fires, or other hazards;
- reduce development potential in areas that separate urban and village areas in order to preserve the visual identities of those communities;
- and reduce air quality impacts and other impacts associated with locating residential development distant from jobs, schools, shopping and recreation.

~~This program is voluntary, incentive based, and market driven between willing sellers and willing buyers. Landowners are not obligated to use this technique to request an amendment to the general plan or to subdivide property in conformance with existing regulations.~~

The voluntary TDC ordinance is adopted in the Land Use Ordinance. The ordinance allows the voluntary transfer of development potential from a sending site to a receiving site. The receiving site would then be allowed to develop at a higher density than would otherwise be allowed by the land use category. The ordinance sets forth the criteria for an applicant to voluntarily request designation as either a sending or receiving site, the means of assigning credits to both the sending and receiving sites, and the procedures for transferring credits from one landowner to another. Both the sending and receiving sites must conform to all standards and criteria for the use of TDCs as set forth in the Land Use Ordinance.

EXHIBIT E
Conservation Easement Amendment

22.24.050 - Designation of sending site.

The following procedures shall be used to complete the sending site designation.

- A. **Guarantees of conservation.** Credits cannot be officially recognized as attached to a legal parcel and available for purchase by a Receiver Site or other qualified individual until such time as a ~~conservation easement~~ Sending Site Easement or other instrument that qualifies under either the Open Space Easement Act or the Conservation Easement Act, is granted in perpetuity to a qualified public or private non-profit organization (as defined by the regulations of the Internal Revenue Service) created for the purposes of protecting and managing resources. A list of approved qualified organizations is on file at the Department. Non-profit organizations that are qualified to hold easements in compliance with this ordinance shall be subject to approval by the Director prior to inclusion on the list.

The grant of a conservation easement does not authorize the public or any member thereof any right of public access unless such is specifically set forth in the easement and agreed to by the property owner.

EXHIBIT F
Other Potential Uses for TDCs

- Secondary dwellings - increase size from 800 to 1,200 or 1,200 to 1,500 square feet where no increase is currently allowed by ordinance.
- Increase building height - allow increased height in urban and village areas for multi-family or mixed use projects.
- Exemptions from the Growth Management Ordinance or first priority for allocations for Residential Single Family, Residential Multi-Family or mixed use projects located within urban and village areas.
- Require all subdivisions located outside of the urban and village areas to retire a credit for each new lot proposed to offset the impacts of development distant from services.
- Require a credit be retired for each lot recognized with a Conditional Certificate where the current owner created the illegal subdivision.
- Allow an increase in the allowed numbers of bedrooms for a Bed and Breakfast (to a max number) without a land use permit.
- Retire credits where a proposed new use will convert agricultural land to a non-agricultural use.
- Reduce the amount of required open space in a cluster subdivision by no more than 10%.
- Reduce the amount of required open area for a multi-family project by no more than 5%.
- Allow a 10% increase in the size of a detached garage/workshop without a land use permit.
- Allow an adjustment to required setbacks in urban and village areas without a land use permit.
- Modify the ratio of residential to commercial in a mixed use project to allow for a greater percentage of the site to be used for residential purposes.
- Allow a modification of parking requirements for multi-family and mixed use projects located within urban or village areas without a land use permit.
- Oak Tree Mitigation fee to purchase credits.
- Direct priority processing where credits are purchased.

EXHIBIT G
List of References

1. Transfer of development Credit Program, Adopted October 8, 1996 amended August 10, 2004
2. Exchange rates and their Role in a TDC Program Prepared for the San Luis Obispo County Department of Planning and Building, prepared by The Land Conservancy of San Luis Obispo, September 1995
3. Planning Commission letter to the Board of Supervisors dated May, 2005
4. Board of Supervisors Staff Report Regarding the TDC Program dated Oct 4, 2005.
5. Board of Supervisors Staff Report Regarding the TDC Program dated November 22, 2005.
6. TDRs and Other Market-Based Land Mechanisms: How They Work And Their Role In Shaping Metropolitan Growth, Solimar Research Group, A Discussion Paper Prepared for The Brookings Institution Center on Urban and Metropolitan Policy, June 2004
7. TDC's Lessons, issues, and Recommendations for a TDC program in San Luis Obispo County based on a review of demonstration Projects, Prepared for the San Luis Obispo County Department of Planning and Building, prepared by The Land Conservancy of San Luis Obispo, September 1995
8. Open Space Holdings of the City of San Luis Obispo as of December 31, 2006, provided by Neil Havlik
9. Land Transfer Bank Concepts Summary, Presentation by BK Richard, The Land Conservancy of San Luis Obispo, August 22, 2007
10. Making TDR's Work, Presentation by William Fulton, Solimar Research Group, August 8, 2007
11. Smart Preservation using Transfer of Development Rights, Presentation by Rick Pruetz, September 19, 2007
12. Land Transfer Bank Concepts Summary, Prepared for the Transfer of Development Credit Blue Ribbon Committee, Prepared by BK Richard, TDC BRC Representative from The Land Conservancy of San Luis Obispo, July 10, 2008
13. Draft – Study of Non Conforming Subdivisions in San Luis Obispo County, Prepared by The Land Conservancy of San Luis Obispo, August, 2007